

to require advance notification for all bridge openings during the evening and night time hours for a 120-day period in order to allow the contractor for the Virginia Department of Transportation, owner of the bridge, to add studs to the metal grating on the drawspan, while still providing for the reasonable needs of navigation.

Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

**DATES:** This temporary rule is effective from April 21, 1989, to August 21, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before May 22, 1989.

**ADDRESS:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be made available for inspection and copying at room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, (804) 398-6222.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

#### Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

#### Discussion of Temporary Rule

At the request of the Virginia Department of Transportation, owner of the bridge, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the James River at mile 5.0, between Isle of Wight and Newport News, Virginia. A contractor for the Department has indicated that it will be necessary to place equipment on the deck of the drawspan in order to add studs to the metal grating on the drawspan that will increase traction for motor vehicles crossing the span. However, for safety reasons the equipment must be removed from the span before it is raised. The

Virginia Department of Transportation has advised the Coast Guard that it will take 20 minutes to remove the equipment, thereby necessitating a 20-minute advance notification by vessels requiring a bridge opening. The Department requested that the work be approved to begin on April 17, 1989, and continue for a period of 120 days. Since the April 17 beginning date does not give the Coast Guard enough time to issue a public notice or to publish this temporary schedule in the **Federal Register**, the work will begin on April 21, 1989. The Department has been notified of the change in the beginning date.

The work will take place from April 21, 1989 through August 21, 1989, seven days a week, from 6:00 p.m. to 5:00 a.m., with the exception of Federal holiday weekends and Harbor Fest Weekend. Vessels requiring an opening during the work period will be required to notify the bridgetender 20 minutes in advance of their estimated time of arrival, to permit the contractor to remove equipment from the deck. The Virginia Pilots Association has been contacted, and they have expressed no objection to the 20-minute advance notice requirement. Since these repairs are necessary for the safety of vehicular traffic, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking, and for making it effective in less than 30 days.

#### Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Economic Assessment and Certification

This temporary rule is considered to be non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

#### PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. A new § 117.1012 is temporarily added to read as follows:

#### § 117.1012 James River

(a) The James River Bridge, mile 5.0, between Isle of Wight and Newport News, VA:

(1) From April 21, 1989 to August 21, 1989, from 6:00 p.m. to 5:00 a.m. daily, the draw need not open unless 20 minutes advance notice is given.

(2) From 6:00 p.m. to 5:00 a.m. on Memorial Day Weekend, May 27-29, 1989; on Independence Day Weekend, July 1-4, 1989; and on Harbor Fest Weekend, June 2-4, 1989, the draw shall open on signal.

(3) Shall open on signal at all other times.

Dated April 17, 1989.

H.B. Gehring,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District, Acting.

[FR Doc. 89-10159 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-14-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 721

[OPTS-50568A; FRL-3563-2]

#### Pentabromoethylbenzene; Significant New Use of Chemical Substance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentabromoethylbenzene (PEB, CAS Number 85-22-3) for any use. EPA believes that this action is necessary because PEB may be hazardous to human health and the environment, and that any use of PEB and activities associated with such use may result in significant human and environmental exposure. The notice will furnish EPA with the information needed to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur.

**DATES:** In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on May 12, 1989. This rule becomes effective on June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The SNUR for PEB requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of PEB for any use. The required notice will provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur. This rule was proposed in the *Federal Register* of November 22, 1988 (53 FR 47228). No public comments were received in response to the proposal.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington,

DC 20503, marked "Attention: Desk Officer for EPA."

#### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the *Federal Register* its reasons for not taking action.

Persons who intend to export a substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR Part 707.

#### II. Applicability of General Provisions

In the *Federal Register* of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). On July 27, 1988 (53 FR 28354), EPA promulgated amendments to the general provisions which apply to this SNUR except as provided in § 721.1515(b)(1). The entire text of Subpart A was published in that document; interested persons should refer to it for further information. In the *Federal Register* of August 17, 1988 (53 FR 31252), EPA promulgated the "User Fee Rule" (40

CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that *Federal Register* notice.

#### III. Summary of this Rule

The chemical substance which is the subject of this SNUR is PEB. EPA is designating any use of PEB as a significant new use. Thus, this rule requires persons who intend to manufacture, import, or process PEB for any use to notify EPA at least 90 days before such manufacture, import, or processing.

#### IV. Background Information on PEB

Background information on production, use, human health effects, and exposure for PEB appears in the preamble to the proposed rule (53 FR 47228). Interested persons should refer to that document for further information.

#### V. Objectives and Rationale for this Rule

To determine what would constitute a significant new use of PEB, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this rule:

1. EPA wants to ensure that it will receive notice of any company's intent to manufacture, import, or process PEB for any use before that activity begins.

2. EPA wants to ensure that it will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing PEB for any use.

3. EPA wants to ensure that it will be able to regulate prospective manufacturers, importers, or processors of PEB before any manufacturing, importing, or processing of PEB occurs, provided that the degree of potential health and environmental risk is sufficient to warrant such regulation.

PEB is structurally related to known and suspected carcinogenic substances. Data indicate that absorption occurs when PEB is administered orally. Additionally, evidence exists that PEB persists in the environment and may bioconcentrate. Currently, PEB is not subject to any Federal regulation that would notify the Federal Government of activities that might result in adverse

exposures or releases, or provide a regulatory mechanism that could protect human health from potentially adverse exposures or protect the environment from potentially adverse releases before they occur.

EPA believes that the resumption of any use of PEB, and its related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to PEB as well as increasing the probability of environmental releases. Given the potential toxicity of PEB, the reasonably anticipated situations that could result in exposure or release, and the lack of sufficient regulatory controls, individuals and/or the environment could be exposed to PEB at levels which may result in adverse effects.

Because EPA is concerned about potential exposure during the entire life cycle of PEB, EPA is modifying the requirements of § 721.5(a)(2) as applied to this rule to require any prospective manufacturer, importer, or processor of PEB who intends to distribute the substance in commerce to submit a significant new use notice.

#### VI. Alternatives

In the proposed SNUR, EPA considered regulatory actions for PEB including the use of a TSCA section 4(a)(1)(A) test rule or a section 8(a) reporting rule. No comments were received that addressed the regulatory approach chosen. For the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for PEB.

#### VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the effective date of a SNUR, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became effective; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of PEB for any use between proposal and the effective date of the SNUR must cease that activity before the effective date of this rule. An exception to this general requirement appears at

§ 721.45(h) (53 FR 28354, July 27, 1988). A person may comply with a proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, importation, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

#### VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health and/or environmental risks that may be posed by a significant new use of PEB, EPA suggests potential SNUR notice submitters consider conducting tests that would permit a reasoned evaluation of risks posed by PEB when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with EPA before selecting a protocol for testing PEB. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead EPA to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of PEB. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

#### IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of PEB. EPA's complete economic analysis is available in the public record for this rule (OPTS-50568A).

#### X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50568A). This record contains basic information considered by EPA in developing this rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The proposed rule.
2. The economic analysis of this rule.
3. The three documents listed under REFERENCES (Unit XI of this preamble).
4. Letter from Ethyl Corporation, dated August 18, 1986, informing EPA of their decision to cease production of PEB.
5. ITC report on PEB.
6. This final rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

#### XI. References

1. TSCA section 8(d) document number 878214933.
2. Veith, G.D., DeFoe, D.L. and Bergstedt, B.J. "Measuring and Estimating the Bioconcentration Factor of Chemicals in Fish." *Journal of the Fishery Research Board of Canada*. 38:1040-1048. 1979.
3. Zitko, V. and Carson, W.G. "Uptake and Excretion of Chlorinated Diphenyl Ethers and Brominated Toluenes by Fish." *Chemosphere*. 6:293-301. 1977.

#### XII. Regulatory Assessment Requirements

##### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of \$100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use

notice will be approximately \$1,400 to \$8,000. EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for PEB. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

#### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0038.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

#### **List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: April 20, 1989.

**Susan F. Vogt,**  
*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR Part 721 is amended as follows:

#### **PART 721—[AMENDED]**

1. The authority citation for Part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604 and 2607.

2. By adding new § 721.1515 to read as follows:

##### **§ 721.1515 Pentabromoethylbenzene.**

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance pentabromoethylbenzene (CAS Number 85-22-3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph:

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070-0038.)

[FR Doc. 89-10245 Filed 4-27-89; 8:45am]

**BILLING CODE 6560-50-M**

#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 73**

[MM Docket No. 87-468; RM-6009 & RM-6229]

##### **Radio Broadcasting Services; Easton and Delmar, MD**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 244B1 for Channel 244A at Easton, Maryland, as that community's first wide coverage area FM service, in response to a petition filed by Clark Broadcasting Company. We shall also modify the license of Station WCEI-FM to signify operation on the higher class

channel. The coordinates for Channel 244B1 at Easton are 38-46-13 and 76-04-55. The counterproposal filed by Apex Associates, Inc., proposing the allotment of FM Channel 243A at Delmar, Maryland, has been withdrawn. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-468, adopted April 11, 1989 and released April 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

##### **List of Subjects in 47 CFR Part 73**

Radio broadcasting.

#### **PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

##### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Maryland is amended by deleting Channel 244A and adding Channel 244B1 at Easton.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-10150 Filed 4-27-89; 8:45 am]

**BILLING CODE 6712-01-M**

##### **47 CFR Part 73**

[MM Docket No. 88-331; RM-6356]

##### **Radio Broadcasting Services; Duluth, MN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel \*247C2 to Duluth, Minnesota, reserving the channel for noncommercial educational use, in response to a petition filed by Minnesota Public Radio. Canadian concurrence has been obtained for this